IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO. 301 OF 2000

Anjayya Hanmant Ors,
Convict No.C-1245,
Now at Kolhapur Central
Prison, Kolhapur. .. APPELLANT

VERSUS

The State of Maharashtra
through Rahimatpur Police
Station, Tq. Koregaon,
District - Satara. .. RESPONDENT

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Miss P.S. Cardoza, Advocate appointed for the appellant.

Smt.V.R. Bhosale, APP for the respondent State.

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CORAM: N.V. DABHOLKAR &
Smt.V.K. TAHILRAMANI, JJ.

DATED: 10TH JANUARY, 2006

ORAL JUDGMENT

(PER DABHOLKAR,J.)

1. The appellant accused was held guilty for the offence punishable under section 302 of the Indian Penal Code and sentenced to suffer life imprisonment, fine Rs.500/-; in default, rigorous imprisonment for three months, by 4th Additional Sessions Judge, Satara at the conclusion of Sessions Case No. 97 of 1999. The said conviction and sentence is impugned by present appeal under section 374 (2) of

the Code of Criminal Procedure.

2. The incident in question took place on 3.5.1999 at about 9.30 p.m. at Mauje Wathar G.No. 513. The victim of the incident namely Krushnamma was wife of appellant Anjayya Hanmant. Accused, the victim, Saroja (mother of the accused and PW 1) were living at Wathar - Kiroli at the construction site of T.V.R. Construction Ltd. The accused was working on hammer jack. A large pipe was converted into residential premises by fixing doors to the ends of the pipe. It is the contention of the prosecution that the accused was unhappy due to indecent behaviour on the part of Krushnamma. On the alleged day at about 9 p.m. accused, Krushnamma, mother Saroja and children had their dinner whereafter Saroja and children slept outside the pipe-house. Accused and deceased slept inside the house. At about 9.30 p.m. a quarrel erupted between the spouses during which accused assaulted Krushnamma by a steel rod of hammer jack. At about 11.30 p.m. accused procured a jeep and brought Krushnamma to Civil Hospital, Satara. The Medical Officer declared Krushnamma dead. The accused is said to have absconded at this juncture.

. City Police Station, Satara was intimated about death of Krushnamma by Dr. Salunkhe attached to Civil Hospital. The intimation was communicated to Police

Station Rahimatpur within territorial jurisdiction of which the incident had occurred. In fact, police traced the location of incident through jeep driver of the jeep used for transporting Krushnamma to Civil Hospital. Blood stained steel rod of hammer jack and other articles, such as blood stained clothes, plastic bottle and pieces of bangles were recovered, which were lying inside the house of the accused. The accused was arrested on 5.5.1999 and inspite of medical examination immediately after arrest, no injuries were noticed on his person. After post mortem, Medical Officer opined that Krushnamma died as a result of head injury and intra abdominal bleeding.

. On completion of investigation, charge sheet was submitted in the Court of Judicial Magistrate, First Class, Koregaon and upon committal to the Court of Sessions, Satara, the case ended in conviction as described hereinabove.

3. Plea of the accused is of total denial. He answered almost all the questions, during the course of his statement under section 313 of the Code of Criminal Procedure, 1973, by saying "I do not know". However, at the conclusion of the statement, he has claimed that on the alleged night he had slept inside the house along with Krushnamma, mother and kids. When

he woke up for answering nature's call, he noticed that Krushnamma was not inside the house. He went outside to see that Krushnamma was lying there and she was unable to talk. He lifted Krushnamma, brought her inside the pipe-house. There was profused bleeding from her head injury. Inspite of cries for help, none of the neighbours came to help. He, therefore, arranged a jeep and took Krushnamma to Government Hospital, Satara where she was declared dead. At about 10 a.m. he had been to Karad for arranging money from his friend. He returned to Satara at about 2 p.m. as the friend was not available at Karad and in the evening he returned to his residence at Wathar Kiroli when Krushnamma was already cremated. Thereafter police arrested him.

. It can be said that accused pleads ignorance about the cause for injuries suffered by Krushnamma. He claims to have tried to secure medical assistance to Krushnamma and he denies to have absconded after having learned about death of Krushnamma.

4. Prosecution has examined only three witnesses. PW 1 Saroja is mother of the accused and it is needless to state that she is totally hostile to the prosecution and she has contradicted practically every detail from the first information report that was registered on her statement by Rahimatpur Police

Station. (Exhs. 30 to 34 are the portions from her first information report contradicted by her and proved by the Investigation Officer.) It is also evident that the complaint was registered in Hindi by utilising the services of K. Rajkumar Raddy as interpreter from Telugu to Hindu and vice versa. PW 2 Baba Gaikwad is a panch witness and panchanama of spot (Exh.26) was drawn in his presence. The last witness Anil Sandbhor is A.P.I. of Rahimatpur Police Station who has carried out investigation.

5. In the absence of any serious challenge to the fact of death being homicidal, the learned Trial Judge by relying upon the post mortem notes, has recorded a finding that Krushnamma died homicidal death. The post mortem notes (Exh.24) are admitted in evidence because of No Objection for the same on the part of the defence.

. So far as authorship of the injuries is concerned, the learned Judge has accepted the evidence of mother and statement of accused to arrive at a conclusion that admittedly on the alleged day (night), accused and deceased were living together. By relying upon spot panchanama (Exh.26), the learned Judge held that Krushnamma must have been killed inside the pipe-house and not outside the same. As a corollary, he

also turned down the implied defence that some unknown assailant had inflicted injuries upon Krushnamma while she was outside the house. Because blood groups of the victim and accused were not determined since results of the analysis by forensic science laboratory were inconclusive, the Investigating Officer had moved the Court requesting for directions to the accused to offer blood sample for analysis. This prayer was objected by the defence and the learned Judge has proceeded to draw an adverse inference that blood of group "B" found on plastic bottle and clothes of Krushnamma was that of Krushnamma. He proceeded to observe that human blood detected on the steel rod (drilling rod which had one side sharp edge) and finding of huge quantity of blood on the floor and wall inside the house, clearly indicated that Krushnamma was inflicted injuries inside the house.

. According to learned Judge, following set of circumstances are firmly established and thus leaving no other hypothesis open except that the accused must have inflicted the injuries :

(1) Accused and victim were together on the alleged night.

(2) The pipe house was a closed door house having

no access to outsiders.

(3) Krushnamma was severely beaten and observations in the post mortem note ruled out all other possibilities except homicide.

(4) Explanation given by the accused that Krushnamma had suffered injuries outside the house was not acceptable.

(5) The circumstances on the scene of offence ruled out the probability of incident having occurred outside the house.

. According to the learned Judge, this was a fit situation wherein accused ought to have discharged the burden of proving the facts specially within his knowledge in the light of section 106 of the Indian Evidence Act and since no plausible explanation is offered by the accused, according to learned Judge, the cumulative effect of the circumstances is sufficient to fix the responsibility on the shoulder of the accused. Omission on the part of the accused to lodge any report to the police regarding killing of his wife by third person is also considered by the learned Judge as circumstance weighing against the accused.

6. Heard Advocate Miss Cardoza and APP Smt. Bhosale.

. Learned counsel for the appellant has pointed out to us that there is no direct evidence regarding accused having inflicted injuries upon the person of victim Krushnamma. The case is based on circumstantial evidence and learned Trial Judge has practically given the treatment of "Res Ipsa Logutor" to the prosecution case. She urged that the Trial Court did not give appropriate weight to the fact that accused himself had procured medical assistance to the wife. For that purpose, she relied upon admission of mother Saroja. She has refuted the prosecution contention that the accused had absconded. As a second limb of her argument, she has claimed that since prosecution has declared mother Saroja hostile, the prosecution does not have benefit of "Motive" as one of the circumstances. Although it is claimed by prosecution that accused disliked indecent behaviour of his wife, the said contention has not been firmly established.

. Needless to say that learned APP argued in approval of line of reasoning recorded by the Trial Court.

7. Upon going through the impugned judgment, it can be said that the Trial Judge has based the conviction only on two main circumstances :

(1) Admitted togetherness of the victim and the accused on the alleged night, and

(2) Attempt of false explanation on the part of the accused.

He has drawn some support from the report of analysis and passive response of the accused to the fact situation.

8. Firstly, about the contention of learned counsel for the appellant that accused secured medical assistance to injured Krushnamma, such a contention is based upon the statement of accused himself as raised during the course of statement under section 313 of the Code of Criminal Procedure and admission of mother Saroja. In para 4 of her evidence, during the course of cross examination by APP, Saroja has stated that along with Anjayya (accused), she had brought Krushnamma to Government Hospital, Satara by a jeep. Although Saroja denied all the portions from first information report confronted to her by learned APP, she admitted that Rajkumar Raddy is officer of the accused, who knows

Telugu language and said Rajkumar acted as interpreter when her statement was recorded by police. Thus, fortunately for the prosecution, she has accepted that her statement was recorded by police. She is a witness totally disowned by the prosecution. She is a witness who has contradicted all the statements made before the police. Consequently, her statement that she and accused took victim Krushnamma to Civil Hospital, Satara, is required to be taken with a pinch of salt. Amongst the documents admitted by the defence is Exh.14, intimation by Police Station Officer to Sub Divisional Police Officer, Satara regarding death of Krushnamma. Column No.6 is summary of information received and this column reads as follows :

"On the date, time and place quoted hereinabove, deceased Krushnamma who had suffered injuries as a result of beating, was admitted to hospital in dead condition by her brother Anjayya Hanmant Varkupla."

It is evident from the record and it can safely be inferred that the police record must have borrowed the details from hospital record; that Krushnamma was admitted to Civil Hospital, Satara by her brother Anjayya Hanmant Varkupla and not by accused Anjayya Hanmant Ors. This record should take away the carpet from under the feet of defence argument that accused had

secured medical assistance for the victim and, therefore, it should be inferred that the accused was not the author of the injuries.

9. We need to refer to panchanama of scene of occurrence in order to examine the contention of defence that incident occurred outside the house. Learned counsel Miss Cardoza did not fail to point out that as per statement of the accused, he had brought the victim inside the pipe-house after having seen her lying in injured condition outside the house. Panchanama of scene of occurrence is duly proved by panch witness Baba Gaikwad, who was not knowing the accused in the past. According to him, Police Patil showed the spot of incident inside the pipe house. There were blood stains at the spot. Both ends of the pipe were closed by steel net and gunny bags. One steel rod stained with blood, pieces of red bangles were lying on the spot i.e. inside the house. In our considered opinion, blood stained steel rod lying inside the house cuts across the defence theory that the victim was assaulted outside the house and blood stains inside the house could have resulted when the injured victim was brought inside the house by the accused. It is not the contention of the accused that he also brought the weapon lying outside and kept it inside the house. In the cross examination it is brought on record that one taxi driver was also

accompanying the Police Patil and the two together showed the spot to the panchas. Existence of the weapon inside the pipe house speaks against the defence theory that victim was assaulted outside the house and blood stains resulted inside the house when the victim was brought inside. The story can be seen to be other way round because there are some blood stains outside the pipe also and these must have been caused when the victim was brought outside the house for boarding the jeep.

10. Once we accepted that victim and accused were family members on the night of incident and other family members were mother of the accused and children (and accused does not allege the mother to have killed his wife) and when panchanama rules out the defence theory clearly establishing that incident must have occurred inside the pipe house, things speak for themselves in the light of attempt on the part of the defence to develop a false explanation. Absence of proof of motive in such situation does not create a dent in the prosecution story.

11. As a second limb of argument, Advocate Miss Cardoza tried to argue that the offence is one under section 304 Part I or II and not under section 302 of the Indian Penal Code. By reference to post mortem

notes (Exh.24), it is evident that victim has suffered multiple number of injuries as many as nine. There are two incised injuries on the head and also fracture of right humerus and dislocation of left elbow. There is abrasion over thorax on right lateral side 9.5 cms. and vertical and probably as a result of this blow, right kidney has suffered rupture causing intra abdominal bleeding in the cavity. In the light of observations by the Supreme Court in the matter of **Virsa Singh Vs. State of Punjab (AIR 1958 SC 465)** and in the absence of circumstances bringing the case of the accused within the purview of any of the exceptions under section 300 of the Indian Penal Code, we are unable to accept the submission by the learned counsel.

12. For the reasons discussed hereinabove, the appeal fails and the same is dismissed.

. Registrar (Judicial) shall ensure supply of certified copy of this judgment, free of costs, to the appellant accused in person through prison authorities.

. Advocate Miss Cardoza was appointed to prosecute the appeal on behalf of prisoner at the costs of the State. We quantify her professional charges at Rs.2,500/-.

(Smt.V.K.Tahilramani,J.) (N.V.Dabholkar, J.)

January 10, 2006.

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